

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

ELIZABETH SINES et al.,)	Civil Action No. 3:17-cv-00072
Plaintiffs,)	
)	
v.)	<u>ORDER</u>
)	
JASON KESSLER et al.,)	
Defendants.)	By: Joel C. Hoppe
)	United States Magistrate Judge

This matter is before the Court on Defendant James Alex Fields’s Motion to Stay Deposition and Appoint Guardian (“Motion”). ECF No. 926. Fields is in state custody serving a prison sentence. In the Motion, Fields’s counsel raises doubts about his client’s competency and asserts that “Fields will refuse to testify via a video deposition,” which was scheduled for February 25, 2021. Fields’s Mem. in Supp. 2, ECF No. 926-1. Counsel suggests that Fields may need a psychiatric evaluation, and he requests that the Court stay Fields’s deposition and appoint a guardian ad litem (“GAL”) to facilitate the evaluation. *Id.* at 2–3. Plaintiffs oppose the Motion. ECF No. 927. Recognizing that Fields will refuse to testify, they acknowledge that deposing him would be futile, and they state that they will cancel his deposition. They also argue that the Court lacks authority to appoint a GAL for a person who is represented by counsel.

Having considered the parties’ arguments, the Court finds that the Motion lacks merit. First, his counsel has stated Fields’s intention to refuse to testify at his deposition, and in response, Plaintiffs have canceled the deposition. No deposition is currently scheduled; thus, there is nothing to stay. Moreover, Fields’s stated intention to refuse to testify does not provide proper grounds staying his deposition. Second, the Court has authority to appoint a GAL for a minor or incompetent party who is not represented by counsel. Fed. R. Civ. P. 17(c)(2); *Buchanan Cty. v. Blankenship*, 406 F. Supp. 2d 642, 645 (W.D. Va. 2005) (citing Wright &

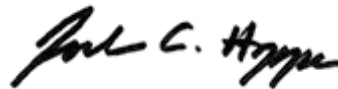
Miller, *Federal Practice and Procedure* § 1570, at 498 (2d ed. 1990)). That is not the situation here. Fields is represented by counsel, and his counsel may take steps to protect Fields's interests. A GAL is not necessary.

Accordingly, the Court finds no basis to stay Fields's deposition or to appoint a GAL. The Motion is hereby DENIED.

It is so ORDERED.

The Clerk shall deliver a copy of this Order to the parties.

ENTER: March 2, 2021

A handwritten signature in black ink, appearing to read "Joel C. Hoppe".

Joel C. Hoppe
United States Magistrate Judge